

RICKY T. FOSTER,

Plaintiff,

v.

LEWIS SMITH, et al.,

Defendants.

)
)
)
)
)
)
)
)
)
)

1:09CV614

On January 7, 2010, Defendants filed a Notice of the Death of Plaintiff Ricky T. Foster and served such Notice upon Deborah Calloway, 40 Calloway Road, Weaverville, North Carolina 28787, Plaintiff's next of kin as listed in the records of the Department of Correction. Pursuant to Fed. R. Civ. P. 25, Plaintiff's successor had 90 days in which to request a substitution of parties on Plaintiff's behalf. That time has expired and no motion for substitution has been filed. Accordingly, the motion for judgment on the pleadings filed by Defendants Wanda Gore and Larry Lanier on December 31, 2009, and the motion to dismiss filed by Defendants Lewis Smith and James Hunsucker on December 31, 2009, should be granted.

Case 1:09-cv-00614-WO-PTS Document 23 Filed 06/03/10 Page 1 of 2

This the 3rd day of June, 2010.

/s/ P. Trevor Sharp
United States Magistrate Judge